



PROCUREMENT NEWS AND NOTES

Legislation Update. After a careful review of the comments on the Department's proposed legislation regarding the application of the Montana Procurement Act to "grants," it was decided to not include any amendments in the bill regarding this section of the Act. For more information on the proposed bill, contact Sheryl Olson at 444-3315.

New Procurement Rules. The State Procurement Bureau will shortly be sending out proposed new administrative rules. All interested agencies will be invited to submit comments on the rules before the formal rule-making process begins.

Contractors Sold Fake Surety Insurance and Bid Bonds. Several small contracting companies in Montana were recently victimized by a scam involving Robert Joe Hanson of Las Vegas, Nevada, using the company name "Individual Surety, LTD." Hanson is accused of acting as an insurance producer and selling fraudulent surety insurance, and bid and performance bonds to small contractors in Montana. Mr. Hanson has previously done business as Millennium Bonding and Global Bonding and recently has been operating a business called I.S., a Native American Corporation. If you are contacted by any of these entities or think you have been sold fraudulent surety insurance or bid bonds, please contact the Investigations Unit at the State Auditor's Office at 1-800-332-6148.

Contracting for Private Legal Counsel. The Governor's Office recently issued a memorandum reminding executive branch agencies that the hiring of private legal counsel requires the approval of the Legal Services Review Committee. This committee is composed of representatives of

the Office of Budget and Program Planning, the Attorney General, and the Governor's Legal Counsel and is vested with the sole and final authority over the use of private legal counsel by executive branch agencies which are directly accountable to the Governor. Committee forms and procedures can be obtained by contacting the Office of Budget Program Planning at 444-3616. Please note that the Committee does require all agencies needing to hire private legal counsel to contact the Agency Legal Services Division of the Department of Justice prior to submitting a contract to the Committee. If Agency Legal Services determines that it is unable to perform the work required, then a copy of the completed contract is to be forwarded to the Legal Services Review Committee for review.

Furniture Bids. In 2002, Governor Martz requested that the following language be included in any furniture solicitations issued by the State of Montana:

"As required by law, the Montana Department of Corrections operates a Prison Industries Training Program. The Prison Industries Program is a potential bidder for this project. To determine if the Industries Program will bid, you may contact Glen Davis, Industries Director, at (406) 846-1320, extension 2320."

Please ensure that this statement is included in any future furniture solicitations issued by your agency.

PUG Speakers. We're excited about our upcoming PUG meeting on Thursday, November 4! We've managed to line up several guest speakers who will speak on a variety of issues of interest to all PUG members. Shawna Lanphear, MSU Purchasing Director, will present her

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perspectives on contract negotiations from her previous private sector experience. Brett Dahl, Risk Manager for the State's Risk Management and Tort Defense Division, will explain and update us on the "ins and outs" of professional liability insurance. Kyle Hilmer, Chief of Policy and Planning Services for the Information Technology Services Division, will talk about modifications to the IT procurement process (see article below). Our keynote speaker is Derek Scoble, an IT contractor, who will be speaking on this year's hot topic: Outsourcing.

IT Procurements. As a reminder, the Montana Information Technology Act (sections 2-17-504, MCA, *et seq.*) provides that all procurements of information technology equipment, software, and contracted services -- subject to some exceptions -- require the prior review and approval of the Information Technology Services Division (ITSD) of the Department of Administration. ITSD has developed the Information Technology Procurement Request (ITPR) form to expedite the review and approval process. That form is available on the ITSD website at the following address: <http://discoveringmontana.com/itsd/contract/templates.asp>. Please remember to complete and submit this form to ITSD prior to submitting a requisition to the State Procurement Bureau for an IT purchase and prior to making an IT purchase under your delegated purchasing authority.

ITSD has also promulgated administrative rules to implement the Act. These rules are also available on the ITSD website at: <http://discoveringmontana.com/itsd/legdir/ARM.asp>. Except for the exemptions specifically provided for in section 2-17-516, MCA, the rules define: (1) the development of state agency information technology plans as provided in section 2-17-518, MCA; (2) the review and approval process for the acquisition of state agency information technology; (3) the granting of exceptions to these requirements; (4) the establishment of standards and policies; and (5) provide for an appeals process.

Modifications to the ITPR process are currently underway. Kyle Hilmer, Chief of Policy and Planning Services for ITSD, will talk about these

changes at the upcoming PUG meeting on Thursday, November 4, 2004.

ENERGY PROCUREMENT

Sign of the Times. The Energy Procurement Program purchases natural gas for qualifying agencies in deregulated markets on the NorthWestern Energy (NWE) pipeline in western Montana and on the Williston Basin Interstate (WBI) pipeline in the eastern part of the state. A term contract for interruptible natural gas supply for MSU-Billings and the Pine Hills Youth Correctional Facility was recently awarded to Commercial Energy of Montana, Cut Bank, at a price of \$5.72 per dekatherm. The 33% increase over the previous year for this one-year contract is attributable to the rising cost of crude oil and recent disruptions of gulf gas production resulting from Hurricane Ivan. We anticipate issuing a two-year bid in the coming months for the facilities on the NWE pipeline system, to take effect July 1, 2005. Questions regarding energy procurement and market forecasts may be directed to Tom Gustin at 444-3312, e-mail tgustin@state.mt.us.

TIPS TO PREVENT EQUIPMENT THEFT from the Risk Management Division

Several recent computer thefts on the Capitol Complex have given rise to concerns about how computers are secured in state buildings.

During the ensuing investigation, it was found that it is common practice in some departments to store used computers and new-in-the-box computers in hallways and even near building exits.

As a reminder, please ensure that offices are locked, especially where laptops and small pieces of equipment such as projectors and cameras are stored on desktops or shelves. Ideally, small pieces of equipment should be locked out of sight when not in use.

PRINT AND MAIL SERVICES NEWS AND NOTES

USPS Package Requirements. The U. S. Post Office is requiring additional information concerning packages sent through the mail system. For every package that Mail Services picks at your agency, our staff are instructed to ask the question: "Does the parcel contain anything liquid, fragile, perishable, or potentially hazardous?" Since our mail clerks do not always see the person sending the package, we are asking that any packages that do contain any of the above materials be clearly marked. We need to know the contents of the package so that we can complete the mailing with the proper endorsements.

Examples of potentially hazardous materials include: cleaning supplies, combustible liquids, paint, biological or medical materials, pesticides, bleach or explosives. If you are uncertain whether your package may contain a hazardous material, please call the USPS help line at 1-800-ASKUSPS. All of the above materials require special handling by Mail Services for mailing.

PUBLIC VEHICLE FUELING

Solutions to Taxing Problems. Previous articles mentioned the inability of Wright Express to exempt the 18.4 cent per gallon Federal Excise Tax on gasoline at unbranded independent fuel merchants and at stations that do not participate in WEX's tax program, e.g., Tesoro, Flying J and some MRC stations. Beginning last month, WEX is applying for the unleaded FET refund on our behalf and issuing a credit to the invoice in the month following. Please do not file for these refunds separately.

Wright Express has also committed to devising a solution to their inability to exempt the FET on clear diesel in the coming months, using a method approved by the Internal Revenue Service in a private letter ruling issued in July 2001. The states of Montana and Georgia have been selected to pilot the clear diesel taxation program. Please stay posted for future developments.

At Your Service! It is widely known that the State's WEX card is accepted at nearly every gas station in Montana and over 140,000 stations nationwide. More and more, agencies are using the card at over 150 service merchant locations in Montana, such as Jiffy Lube, Whalen Tire, Tire-Rama, as well as a number of car dealerships that offer warranty service work. Check with your fleet manager to see if you are authorized to use the WEX card for service. For a list of WEX-accepting service merchants, contact Tom Gustin at 444-3312, e-mail tgustin@state.mt.us.

A Slight Change. The Vehicle Fueling Program is funded by a monthly service fee collected by Wright Express on behalf of the department. Based on net purchases, the fee is assessed in the month following purchasing activity and is itemized on the invoice as an accounting fee. Effective October 1, 2004, the fee will be changed to .005 (one-half of one percent). The fee is adjusted periodically to maintain an adequate fund balance and cover the program's expenses. Sincere thanks to all the government fleets that have supported the program since its inception in 1993.

Jiffy Lube Note. Wright Express recently mailed a packet of \$5-off oil change coupons for state agency use at Jiffy Lube locations. Unfortunately, coupons for personal use were inadvertently included in the mailing. As a matter of policy (see MOM 1-0705.00), SPB discourages the acceptance of this type of offer and believes "non-acceptance of any gift or meal is the best policy." Wright Express will be issuing letters of apology and agencies are advised to detach and destroy the personal portion of the coupons.

PURCHASING CARD

Changes in Store. An RFP was issued in August to establish a new purchasing card contract. The purchasing card program eclipsed the \$31 million mark in annual purchase volume effective August 31, 2004. The RFP generated a great deal of interest from card processors and banks across the country. We anticipate issuing a new contract in early November, with training and card issuance to commence within a month or two following contract execution.

QUESTION OF THE QUARTER

“We are getting ready to issue an RFP for a food service contractor at one of the state universities. This is a ‘revenue generating’ contract in that the contractor’s revenue is generated from student food service fees, catering services, and cash sales. The contractor hires and pays staff, buys food, etc., and pays for all this from the revenue that is generated. In the past, the contractor has at times operated with a deficit, which the university helped to cover from its ‘auxiliary’ accounts of housing and student union fees for building space rental. However, the university also provides the food service facilities, storage, equipment, refrigeration, utilities, security, sanitation, and telephone in support of the contract. Would this contract be considered a public works contract in excess of \$25,000 and be subject to the prevailing wage requirements?”

Yes, the contract would be subject to Montana’s prevailing wage law. The student food service fees, along with the other “auxiliary” accounts are considered public monies because there is nothing in statute or rule that specifically exempts them. Also, because the contract has a potential life of seven years, the university would pay more than \$25,000 during that period of time to make up the deficit. In addition, those individuals employed under student “work-study” grants are not exempt from being paid the appropriate prevailing wage rate for the craft they perform work in. Therefore, the student workers must be paid the appropriate prevailing wage rate for food service workers.

TERM CONTRACT UPDATES

New WSCA PC Contracts. Effective January 1, 2005, the State of Montana will be a participant in the recently awarded Western States Contracting Alliance (WSCA) computer contracts. Our current PC contracts will expire on 12/31/04 and will not be renewed. Montana will sign a Participating Addendum with IBM,

Dell and HP for PCs (desktop and laptop) servers, and peripherals to support desktop computing. Additional information will be sent to all agencies as soon as these agreements are finalized.

ON THE LEGAL FRONT

This summer we reported on the outcome of a nine-year legal battle that involved the Department of Corrections and the awarding of a contract for a pre-release center. In that case, Plaintiff argued that the State did not have the right to cancel a request for proposal. Now a new case has arisen where an individual is challenging the State’s right to cancel a request for proposal. Section 18-4-307, MCA, states that a bid, proposal or other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, when it is in the best interest of the State. In this instance, after the State found problems with the first solicitation, it opted to cancel the RFP and start over again with a corrected document and process.

This will again be an important case to win because of the potential precedent that a different outcome would have on public procurement.

THINK ABOUT IT

“Creativity can solve almost any problem. The creative act, the defeat of habit by originality, overcomes everything.”

--George Lois

PURCHASING USERS GROUP

The next meeting of the Purchasing Users Group will be Thursday, November 4, 2004, from 1 p.m. to 4 p.m. in the Public Health and Human Services Auditorium, 111 North Sanders in Helena.

ABOUT THIS NEWSLETTER

“GSD Update” is published quarterly by the General Services Division of the Montana Department of Administration. For more information, or to get on the mailing list, contact us at (406) 444-2575. Our address is: P.O. Box 200135, Helena, MT 59620-0135. Fax number: (406) 444-2529. Website address: www.discoveringmontana.com/doa/gsd.